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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/784,213 | 02/24/2004 | Willy Poppe | POPP3001/JEK | 8412 |

23364 7590 10/21/2005

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| EXAMINER |
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BROWN, JAYME L

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| ART UNIT | PAPER NUMBER |
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1733

DATE MAILED: 10/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/784,213

Applicant(s)

POPPE, WILLY

Examiner

Jayme L. Brown

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 8/22/05.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>8/22/05</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is in response to the amendments and arguments filed on 8/22/05.

All previous rejections of the claims under 35 U.S.C 112, second paragraph are withdrawn in light of the amendments to the claims and in view of Applicant's arguments.

Information Disclosure Statement

2. The information disclosure statement (IDS) submitted on 8/22/05 has been considered by the examiner.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Poppe (U.S. Patent 4,194,255) in view of Contreras (U.S. Patent 5,797,154) and Giori et al. (U.S. Patent 6,684,433).

Regarding claim 1, Poppe teaches a method for manufacturing a tubular, resilient body for pillows, mattresses or the like, wherein the method consists essentially of providing slits in a foam block of well determined dimensions; bending two opposite ends of the block (foam strip) towards each other; fixing both ends in order to form the

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aimed tubular, resilient body, wherein at least a part of the cells present in the foam are broken open (Column 3, lines 8-62; Figures 1 and 2).

Poppe is silent towards a step of cutting the block (strip) out of a foam layer that has slits. Contreras teaches cutting a pillow structure from a larger slab of cushioning material (foam layer) (Column 3, lines 14-33). One skilled in the art would have readily appreciated cutting the block out of the foam layer or having the block already prepared to the correct dimensions as they are both conventional ways to obtain the foam strip required to make the tubular, resilient bodies and are obvious alternate expedients. One skilled in the art would have also readily appreciated that the slits could be provided in the foam layer prior to cutting or they could be provided in the strip (block) after being cut to the desired dimensions, since they are alternate expedients obvious over one another and both result in the same material for the tubular, resilient body.

Poppe also teaches that the tubular body is made of synthetic foam or the like (Column 1, lines 57-61), but is silent towards the synthetic foam being viscoelastic foam. Giori et al. teaches that it is known in the prior art that viscoelastic foam is used in mattresses and support pads (Column 1, lines 20-26). Contreras also teaches using viscoelastic foam in pillows (Column 3, lines 18-19). One skilled in the art would have readily appreciated that one type of synthetic foam that could be used to make the tubular bodies is viscoelastic foam, because it provides improved comfort and support and exhibits a slow recovery time.

In summation, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use viscoelastic foam and to cut the strip (block) from a

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foam layer with slits in the method of Poppe as suggested by Giori et al. and Contreras, respectively.

Regarding claim 2, one skilled in the art would have readily appreciated that the cells would be broken open when the foam is bent and pressed together in the method of Poppe.

Regarding claim 3, Poppe teaches that the slits (incisions) are provided in the axial direction of the tubular, resilient body (Figures 1 and 2).

Regarding claim 4, Poppe teaches that the opposite ends of the strip are bent such that a tubular body is formed with a biconical or almost biconical shape on the outside (Figure 2).

Regarding claim 5, Poppe teaches that the strip is stretched at least in its longitudinal direction when being bent, whereby the slits are drawn open in order to form cavities (hollows) (Column 3, lines 8-62; Figure 2).

Response to Arguments

5. Applicant's arguments filed 8/22/05 have been fully considered but they are not persuasive. Applicant argues that Poppe fails to teach or suggest cells of the foam being broken open by pressing the foam together. However, as noted above, Poppe teaches that the block of foam is bent so that the opposite ends are pressed and bonded together to form the tubular, resilient body. One skilled in the art would have readily recognized that during this bending step, the slits are opened causing the cells of the foam to be broken open.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

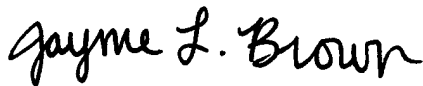
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jayme L. Brown whose telephone number is 571-272-8386. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Dunn can be reached on 571-272-1171. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jayme L. Brown



JOHN T. HARAN
PRIMARY EXAMINER